

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

R. K. Carter & Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Corporation Franchise Tax :
under Article 9-A of the Tax Law
for the Year 1973. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of May, 1980, he served the within notice of Decision by certified mail upon R. K. Carter & Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

R. K. Carter & Co.
c/o Centennial Industries, Inc.
New York, NY 10001

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

R. K. Carter & Co.

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision
of a Determination or a Refund of
Corporation Franchise Tax
under Article 9-A of the Tax Law
for the Year 1973.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Robert Harris the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Robert Harris
R. K. Carter & Co.
c/o Centennial Industries, Inc., 2 Penn Plz.
New York, NY 10001

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
23rd day of May, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 23, 1980

R. K. Carter & Co.
c/o Centennial Industries, Inc.
2 Pennsylvania Plz. - Suite 1648
New York, NY 10001

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Robert Harris
R. K. Carter & Co.
c/o Centennial Industries, Inc., 2 Penn Plz.
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
R.K. CARTER & CO., INC.	:	DECISION
for Redetermination of a Deficiency or for Re-	:	
fund of Franchise Tax on Business Corporations	:	
under Article 9-A of the Tax Law for the Year	:	
1973.	:	

Petitioner, R.K. Carter & Co., Inc., c/o Centennial Industries, Inc., 2 Penn Plaza, New York, New York 10001, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the year 1973 (File No. 13969).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 20, 1977 at 11:45 A.M. Petitioner appeared by Robert Harris, tax manager and assistant controller of R.K. Carter & Co., Inc. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether out-of-state billing services by a parent corporation on behalf of its New York subsidiary, coupled with the backcharging therefor, is sufficient to make the place where such services were performed a regular place of business of the New York subsidiary outside New York State thus enabling the subsidiary to allocate part of its income outside of New York State.

FINDINGS OF FACT

1. In 1975 petitioner filed an amended return in New York State for 1973, claiming an office in Chicago, Illinois, and a warehouse in Seattle, Washington, as regular places of business outside New York State.

2. On January 15, 1975, the Audit Division issued a Statement of Audit Adjustment to petitioner for \$105.00 in tax, plus interest. Petitioner then filed an amended return dated January 30, 1975 and a petition dated February 3, 1975, claiming a refund of \$28.00.

3. Petitioner, R.K. Carter & Co., Inc., operated a merchandising and information service for its subsidiaries from its New York City offices throughout 1973. Petitioner acted as an intermediary in providing its subscribers (primarily automotive dealers) with automotive supplies and equipment at competitive prices.

4. Petitioner was a subsidiary of Biddle Purchasing Company, Inc. ("Biddle") in 1973. Biddle maintained offices in both New York City and Chicago, Illinois.

5. Petitioner's New York City offices were located on premises leased by Biddle in Biddle's own name. Rent was allocated by Biddle to petitioner and charged to petitioner's account.

6. Petitioner's Chicago address appears on all mailings to its subscribers, together with a Chicago telephone number. Petitioner's Washington address does not appear on any correspondence.

7. Petitioner's billing was handled from Chicago by employees of Biddle. Certain expenses were paid by Biddle, then charged back to petitioner's account.

8. Petitioner was charged with depreciation on a very small number of office furnishings bought by Biddle for its Chicago offices.

9. Petitioner was not allocated and did not pay any rent on the premises it claimed in Chicago, Illinois, for 1973. Such premises were leased in Biddle's name and were employed by Biddle for its own purpose.

10. Petitioner had no employees at its Chicago, Illinois, address for 1973. All employees at that address were employees of Biddle, the equivalent of two of whom handled some of petitioner's affairs.

11. Petitioner had no employees at the Seattle, Washington, warehouse in 1973, nor did it hold itself out as doing business in the State of Washington in that year.

12. Petitioner had no payroll in Chicago or anywhere else in 1973.

13. Petitioner had no separate office space at Biddle's Chicago premises in 1973.

14. Petitioner paid no corporate taxes to the states of Illinois or Washington in 1973 and filed no tax returns in those states for that year.

CONCLUSIONS OF LAW

A. That petitioner did not maintain a separate, regular place of business at its parent company's offices outside New York State in 1973, within the meaning of section 210.3(a) (4) of the Tax Law, nor did it maintain such a regular place of business in Seattle, Washington; therefore, petitioner is not entitled to use a business allocation percentage of less than 100% for 1973, under section 210.3(a) (4) of the Tax Law. (See, In The Matter of Fire Devices, Inc., State Tax Commission, August 21, 1967; see also, In The Matter of Petition of Slacsar Publishing Company, Ltd., State Tax Commission, August 14, 1975.)

B. That the petition of R.A. Carter & Co., Inc. for refund of tax is denied.

DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
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Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of June, 1980, he served the within notice of Decision by certified mail upon R. K. Carter & Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

R. K. Carter & Co.
225 Broadway
New York, NY 10007

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
11th day of June, 1980.

Joanne Knapp

J. Vredenburg